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Impasse Procedures for General Public Employee Units



Office of the Illinois
State & Local
Labor Relations Boards

UNIVERSITY OF ILLINOIS-URBANA



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The Illinois Labor Relations Boards' Rules and Regulations concerning impasse procedures detail the procedures for giving required notices during collective bargaining, for resolving impasses in collective bargaining, for making appointments to the Illinois Public Employees Mediation/Arbitration Roster, and for the selection of mediators, fact-finders and arbitrators from the Roster. The regulations implement the policies of the Illinois Public Labor Relations Act ("Act") to provide peaceful and orderly procedures to protect the rights of public employers, public employees, labor organizations and the general public, to prevent labor strife and to protect the public's health and safety.

This brochure contains answers to the most commonly asked questions concerning the Boards' impasse procedures for general public employee units.

Q. What are general public employee units?

A. General public employee units are employees who, unlike protective service employees, have the right to strike in accordance with Section 12 of the Act.

Q. What is the first step in the bargaining and/or impasse resolution procedure for public employee units?

A. Any party wishing to terminate or modify an existing contract shall serve on the other party a written demand for bargaining (with a copy to the Board) 60 days prior to the scheduled termination date of the existing contract. Service of this demand continues all terms and conditions of the existing contract for a period of 60 days or until the expiration date of the contract, whichever occurs later. **NO STRIKE OR LOCKOUT SHALL BE COMMITTED DURING THIS TIME PERIOD.**

If impasse is reached anytime after negotiations for either an initial or successor contract, then either party may request mediation.

Q. What is mediation?

A. Mediation is when a third party, the mediator, attempts to assist the parties in reaching agreement.

Q. How does a party proceed to mediation?

A. Requests for mediation are generally filed jointly. One side may request mediation when the other party has been asked to join in the request and refused. A unilateral request shall be accompanied by a written statement stating the circumstances of the other party's refusal. If the Board's investigation discloses that the unilateral request was properly filed and that mediation would assist the parties, the request shall be granted. If the unilateral request was filed by the exclusive bargaining representative and the Board grants the request, the precondition, concerning mediation, for a lawful strike shall have been met.

Q. What does the Board do when it receives a legitimate request for mediation?

A. If the parties desire the assistance of the Board in engaging a mediator, the Board provides a panel of three mediators from the Public Employees Mediation/Arbitration Roster. The parties shall choose one of the persons on the panel to serve as the mediator within 7 days after receipt of the list or the Board will appoint the mediator. The parties also have the option of choosing a mediator on their own with no assistance from the Board. The Board, however, shall be informed of their selection.

Q. What is the Public Employees Mediation/Arbitration Roster?

- A.** The State Labor Relations Board and the Local Labor Relations Board are responsible for establishing and maintaining the Illinois Public Employees Mediation/Arbitration Roster, which is a list of qualified mediators and arbitrators in Illinois. This Roster is available for use in fact-finding, mediation, voluntary interest arbitration, grievance arbitration and grievance mediation. Appointments to the Roster are based upon a majority vote of the members of both Boards, after application by the individual.

In making appointments to the Roster, the Boards consider such factors as experience and training, membership on other recognized mediation or arbitration panels, education, prior published awards, current advocacy in employment relations matters, letters of recommendation supporting the application, and any other relevant material supplied by the applicant or requested by the Boards. Individuals appointed to the Roster are required to be residents of the State of Illinois.

Q. What happens during mediation?

- A.** The mediator may hold joint or separate conferences with the parties in order to bring about an amicable and voluntary settlement of the dispute. Information disclosed at such conferences shall not be disclosed by the mediator either voluntarily or by compulsion.

Should agreement be reached at this stage of impasse, the parties shall file a copy of the resulting contract with the Board.

- Q. What if mediation fails to result in a contract? Are any other options available to the parties?**

- A.** Yes. Board impasse procedures offer the use of fact-finding and voluntary interest arbitration, if the parties mutually desire to use such procedures.

If the parties cannot otherwise resolve their dispute, general public employee units have the right to strike when certain conditions are met.

Q. What is fact-finding?

- A.** Fact-finding is when a third party (the fact-finder) holds hearings with all parties involved and then issues a written report containing the finding of facts and recommendations for resolution of the dispute. These recommendations are not binding on the parties and may be rejected, but the report is to be made public. If the fact-finder's recommendation is rejected, the parties may resume negotiations.

Q. Who can request fact-finding and when?

- A.** Both parties must agree to the request for fact-finding. Such a request may be filed with the Board at any time during the negotiations.

Q. What happens once the request is filed?

- A.** If fact-finding follows mediation, the parties may agree to use the mediator as fact-finder provided that the mediator is not a Board employee.

If the parties have not been involved in mediation, or have chosen not to use the mediator as the fact-finder, the Board supplies a list of seven fact-finders from the Public Employees Mediation/Arbitration Roster. The parties shall select within 10 days one individual from the list to serve as fact-finder.

Fact-finders conduct informal hearings. A report is then issued stating the findings. Such a report shall be issued within 45 days after the appointment of the fact-finder, unless the parties mutually agree to extend the time period.

Within 5 days after service of the findings and report, the fact-finder shall mail his/her findings and report to all newspapers of general circulation in the community, as mutually designated by the parties, unless the parties mutually request otherwise.

These findings are non-binding.

Q. What is voluntary interest arbitration?

- A. Voluntary interest arbitration is a process whereby an employer and an exclusive representative submit their disputes concerning the terms of a new collective bargaining agreement for binding resolution by a third party.

Q. Who can request voluntary interest arbitration?

- A. Both parties shall agree to the use of voluntary interest arbitration and shall file their request with the Board.

Q. How is the interest arbitrator selected?

- A. Upon receipt of the parties' request, the Board shall provide a list of up to seven interest arbitrators from the Public Employees Mediation/Arbitration Roster. The parties shall select one from this panel.

Q. What happens in an interest arbitration hearing?

- A. The interest arbitrator conducts the hearing in accordance with the agreement of the parties. Generally, informal hear-

ings are conducted with the arbitrator controlling the hearing, issuing subpoenas and taking testimony.

Q. What conditions shall be met before general public employees may exercise their right to strike?

A. Employees with the right to strike under the Act must meet the following conditions before a lawful strike can occur.

- 1) The employees must be represented by an exclusive bargaining representative that has been certified by the Board or that has a valid claim to status as an historical bargaining representative pursuant to the Act.
- 2) The collective bargaining agreement between the public employer and the public employees, if any, has expired, or such agreement does not prohibit the strike. (Pursuant to the Act, a collective bargaining agreement must contain provisions prohibiting strikes for the agreement's duration and providing for a grievance procedure culminating in final and binding arbitration of disputes over the interpretation of the agreement unless the parties agree to forego these provisions).
- 3) The public employer and the labor organization have not mutually agreed to submit the disputed issues to final and binding interest arbitration.
- 4) The exclusive representative has requested a mediator pursuant to the Act, and Rules and Regulations.
- 5) At least 5 days have elapsed after a notice of intent to strike has been given by the exclusive representative to the public employer. A copy of the notice shall be filed with the Board and shall reference the contract

number in cases of negotiations for successor contracts or the certification case number in cases of negotiations for initial contracts.

Q. Does the employer have any available means in which to stop a strike?

- A. If the strike allegedly constitutes a clear and present danger to the health and safety of the public, the public employer concerned may file with the Board a petition for a strike investigation. Pursuant to that petition, the Board must decide, within 72 hours, whether such danger exists. If the Board agrees with the employer, the employer may then petition the circuit court where the strike is about to occur or is in progress, to either stop the strike or to set requirements that would remove the clear and present danger. Any employees ordered back to work (declared by the court to be “essential employees”) are then subject to the interest arbitration procedures for protective service employees.

Q. How is such a petition filed?

- A. The petition for a strike investigation shall be on a form supplied by the Board and be accompanied by copies of all relevant evidence, including affidavits, concerning the existence of a strike or the threat of a strike, and concerning the existence of a clear and present danger to the health and safety of the public. A copy of this material shall be served simultaneously by the employer to the labor organization and Board.

The Board investigates the petition and may hold an expedited hearing to resolve disputed issue of material facts.